

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

JUDGMENT

Hakam Singh vs. The State of Rajasthan.

D.B.Cri. Jail Appeal No.286/2002

Under Section 374 (2) Cr.P.C.
against the judgment dated 05.03.02 passed
by the Addl. Sessions Judge , Srikanpur
in Sessions Case No.16/2000.

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Date of Order:

06th August, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Dr. Rakesh Sinha, amicus curiae for the appellant.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

This appeal has been filed by accused appellant
Hakam Singh , against the decision of the Addl. Sessions Judge ,
Srikanpur, District Srigananagar, in Sessions Case No.15/2000
dated 05.03.2002.

The case was instituted on the basis of a report lodged by Kashmir Lal s/o Loku Ram at 09.30 PM on 24.01.00 at Police Station Padampur. According to the statement of the complainant, accused is married to his sister-in-law Kailasho. They had four children Sandeep, Manto, Zeen and Pappu. Hakam Singh was working as Grandhi of Gurudwara of 13 E.E.A. Fatehgarh Sahab -ke Nahar. On 24.01.00 Kashmir Lal had come to Padampur in connection with some business. At about 09.10 AM he met accused Hakam Singh. His children were accompanying him. He asked about Kailasho. He then said that Kailasho is in hospital. When he started to ask the children about her, they were not permitted to talk to him. Then he went to his house where he informed the incident to his mother-in-law and his wife. Then he came to Gurudwara and found that there was blood on the kitchen floor and wall and concluded that Hakam Singh has killed his wife. Then Kaku and Dalip Singh also arrived there. They informed him that Hakam Singh has killed his wife. They also informed that head of a lady is lying locked on the outlet of 5 E.E.A. He went there and found that the head of Kailasho half burnt was lying there. The trunk was not found near. Master Kishan Lal Nayak informed that in the afternoon, Hakam Singh, along with his four children went in a jeep. Hakam Singh had assaulted Kailasho even 7-8 months before. Regarding

that there was a case instituted against him in Haryana. On the basis of the aforesaid information, the police registered a case being case No.16/2000 under Section 302 and 201 IPC. Investigation was conducted, a challan was filed in the court of Magistrate against the accused, under section 302, 201 IPC. The case was committed to the court of Sessions, from where it was made over to the trial court, where charges under section 302 and 201 IPC were framed against the accused. The accused denied the charges and claimed trial.

At the trial, prosecution produced 21 witnesses and exhibited 41 documents. The accused was examined under section 313 Cr.P.C. No defence evidence was produced.

After considering the case of the prosecution, the trial court came to the conclusion that there is no direct evidence available on record. The case was started by the prosecution on the basis of the circumstantial evidence. To conclude the evidence of prosecution the trial court observed as under:

“(1) अभियुक्त हाकमसिंह गुरूद्वारा 13 ई.ई.ए.
में ग्रंथी का कार्य करता था।

(2) अभियुक्त हाकमसिंह अपनी पत्नी मृतका कैलाशो उर्फ पदमजीत कौर के साथ व अपने बच्चों के साथ रहता था।

(3) अभियुक्त हाकमसिंह जिस गुरुद्वारा में रहता था, उस गुरुद्वारे से 23 व 24.1.2000 की रात के बाद फरार हो गया और उसकी पत्नी व उसके बच्चे कोई भी गुरुद्वारे में नहीं मिले।

(4) जिस गुरुद्वारे में अभियुक्त अपने परिवार के साथ रहता था उसके रसाई के लेंगर में फर्श पर खून के छींटे मिले, खून साफ किया हुआ मिला।

(5) 25.1.2000 को अभियुक्त हाकमसिंह की पत्नी कैलाशो का सिर घटनास्थल अर्थात् गुरुद्वारे के पास 60-70 की दूरी पर नहर में पड़ा हुआ मिला। धड़ थोड़ा आगे पानी में बहकर चला गया जिसे बरामद किया गया।

(6) सिर व धड़ की बरामदगी की पुष्टि पी.डब्ल्यू-20 दीनदयाल अनुसंधान अधिकारी करता है तथा सिर व धड़ की पहचान पी.डब्ल्यू-21 चंदोबाई के द्वारा होती है। सिर व धड़ पर अनेकों चोटें थी, गर्दन की मासपेशियों कटी हुई थी, हड्डी कटी हुई थी। शरीर पर 10-12 चोटें थी, शरीर को

जलाया हुआ भी था, इसकी पुष्टि पी.डब्ल्यू-8
डाक्टर हरबंस खुराना करती है।

(7) अभियुक्त घटना के बाद अर्थात्
24.1.2000 की रात्रि से ही अनुपस्थित हो
गया और बच्चों को भी ले गया। सामान
को जीप के द्वारा ले जाने की पुष्टि
पी.डब्ल्यू-4 बृजलाल की जीप किराये पर
ले गया था, उसके कथनों से होती है।"

The learned counsel for the appellant , assailing the decision of the trial court, submitted that the circumstances which have been held proved by the trial court, against the accused, do not make out a case of a chain of circumstances, by virtue of which it can be conclusively established that it was the accused alone who can be held responsible for the death of the deceased. The circumstances which has been noted down by the trial court ,may create doubt against the accused, but the doubt itself is not sufficient to bring home the offence of murder against the accused, and in that view of the matter, the argument of the learned counsel is that mere suspicion can not take place of proof and in that view of the matter, the accused deserves to be acquitted of the charges levelled against him.

The learned Public Prosecutor, per contra, submitted that

the wife had died. In what circumstances did she die, was to be explained by the accused. He has produced no explanation. He had left the scene of occurrence without explaining the circumstances in which she has left the maternal home and, therefore, it maybe presumed that the accused is guilty of the charges levelled against him.

We have heard the learned counsel and have given our thoughtful consideration to the facts obtaining on record.

The case which prosecution brought, has not been supported by few of the prosecution witnesses. The material witnesses have turned hostile. The recovered articles have not been found to be stained with human blood, except that the blood has been found on the piece of floor and a piece of wall. But that too is not established to be of a specific group. Therefore, in the shape of corroborative circumstantial evidence, there was no material available on record.

We have to judge the prosecution case in the background that material witnesses have turned hostile and recoveries have not been found worthy of corroborating the prosecution case. The basic case is that the accused has not been

able to explain the death of his wife. By this lapse alone it cannot be presumed that he was guilty of the charges levelled against him. The children were also living with the spouse. The children have not come forward to support the prosecution case. There was no direct evidence. In the circumstances which have been noticed by the trial court that the accused used to live with the deceased at Gurudwara, some blood spots were found on the floor and wall, and that accused had left Gurudwara with the children after the incident, these broadly stated circumstances may give some impressions that the the accused may be guilty, but then in a criminal case, there is difference between may be and must be and until the circumstances travel beyond this, it is difficult to sustain the conviction.

We feel that the suspicion, howsoever strong it may be, cannot take the colour of proof and in the instant case, the proof being not available to satisfy in our conscious we are of the opinion that the accused deserves the benefit of doubt. In that view of the matter we are persuaded to hold that the prosecution has failed to bring home the case against the accused. The case has not been made out against the accused.

In the result, the appeal is allowed. The accused

appellant Hakam Singh, is acquitted of the charges levelled against him. His conviction under Section 302 and 201 IPC is set aside. Consequently, his sentences are also set aside. He is behind the bars, he should be released forthwith, if not required in any other case.

(MUNISHWAR NATH BHANDARI), J.

(BHAGWATI PRASAD), J.